

IC 6-8.1-5

Chapter 5. Assessment of Taxes

IC 6-8.1-5-1

Proposed assessment; notice; protest; hearing; letter of findings; rehearing; appeal; demand for payment

Sec. 1. (a) If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to IC 6-8.1-10 concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

(b) If the person has a surety bond guaranteeing payment of the tax for which the proposed assessment is made, the department shall furnish a copy of the proposed assessment to the surety. The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

(c) The notice shall state that the person has sixty (60) days from the date the notice is mailed to pay the assessment or to file a written protest. If the person files a protest and requires a hearing on the protest, the department shall:

- (1) set the hearing at the department's earliest convenient time; and
- (2) notify the person by United States mail of the time, date, and location of the hearing.

(d) The department may hold the hearing at the location of its choice within Indiana if that location complies with IC 6-8.1-3-8.5.

(e) No later than sixty (60) days after conducting a hearing on a protest, or after making a decision on a protest when no hearing is requested, the department shall issue a letter of findings and shall send a copy of the letter through the United States mail to the person who filed the protest and to the person's surety, if the surety was notified of the proposed assessment under subsection (a). The department may continue the hearing until a later date if the taxpayer presents additional information at the hearing or the taxpayer requests an opportunity to present additional information after the hearing.

(f) A person that disagrees with a decision in a letter of finding may request a rehearing not more than thirty (30) days after the date on which the letter of finding is issued by the department. The department shall consider the request and may grant the rehearing if the department reasonably believes that a rehearing would be in the best interests of the taxpayer and the state.

(g) If a person disagrees with a decision in a letter of finding, the person may appeal the decision to the tax court. However, the tax court does not have jurisdiction to hear an appeal that is filed more

than one hundred eighty (180) days after the date on which the letter of finding is issued by the department.

(h) The tax court shall hear an appeal under subsection (g) de novo and without a jury. The tax court may do the following:

- (1) Uphold or deny any part of the assessment that is appealed.
- (2) Assess the court costs in a manner that the court believes to be equitable.
- (3) Enjoin the collection of a listed tax under IC 33-26-6-2.

(i) The department shall demand payment, as provided in IC 6-8.1-8-2(a), of any part of the proposed tax assessment, interest, and penalties that it finds owing because:

- (1) the person failed to properly respond within the sixty (60) day period;
- (2) the person requested a hearing but failed to appear at that hearing; or
- (3) after consideration of the evidence presented in the protest or hearing, the department finds that the person still owes tax.

(j) The department shall make the demand for payment in the manner provided in IC 6-8.1-8-2.

(k) Subsection (a) does not apply to a motor carrier fuel tax return. *As added by Acts 1980, P.L.61, SEC.1. Amended by P.L.332-1989(ss), SEC.28; P.L.60-1990, SEC.12; P.L.71-1993, SEC.17; P.L.98-2004, SEC.73.*

IC 6-8.1-5-2

Time limitation on issuance of proposed assessment; extension

Sec. 2. (a) Except as otherwise provided in this section, the department may not issue a proposed assessment under section 1 of this chapter more than three (3) years after the latest of the date the return is filed, or any of the following:

- (1) the due date of the return; or
- (2) in the case of a return filed for the state gross retail or use tax, the gasoline tax, the special fuel tax, the motor carrier fuel tax, the oil inspection fee, or the petroleum severance tax, the end of the calendar year which contains the taxable period for which the return is filed.

(b) If a person files an adjusted gross income tax (IC 6-3), supplemental net income tax (IC 6-3-8) (repealed), county adjusted gross income tax (IC 6-3.5-1.1), county option income tax (IC 6-3.5-6), or financial institutions tax (IC 6-5.5) return that understates the person's income, as that term is defined in the particular income tax law, by at least twenty-five percent (25%), the proposed assessment limitation is six (6) years instead of the three (3) years provided in subsection (a).

(c) In the case of the motor vehicle excise tax (IC 6-6-5), the tax shall be assessed as provided in IC 6-6-5-5 and IC 6-6-5-6 and shall include the penalties and interest due on all listed taxes not paid by the due date. A person that fails to properly register a vehicle as required by IC 9-18 and pay the tax due under IC 6-6-5 is considered to have failed to file a return for purposes of this article.

(d) In the case of the commercial vehicle excise tax imposed under IC 6-6-5.5, the tax shall be assessed as provided in IC 6-6-5.5 and shall include the penalties and interest due on all listed taxes not paid by the due date. A person that fails to properly register a commercial vehicle as required by IC 9-18 and pay the tax due under IC 6-6-5.5 is considered to have failed to file a return for purposes of this article.

(e) If a person files a fraudulent, unsigned, or substantially blank return, or if a person does not file a return, there is no time limit within which the department must issue its proposed assessment.

(f) If, before the end of the time within which the department may make an assessment, the department and the person agree to extend that assessment time period, the period may be extended according to the terms of a written agreement signed by both the department and the person. The agreement must contain:

- (1) the date to which the extension is made; and
- (2) a statement that the person agrees to preserve the person's records until the extension terminates.

The department and a person may agree to more than one (1) extension under this subsection.

(g) If a taxpayer's federal income tax liability for a taxable year is modified due to the assessment of a federal deficiency or the filing of an amended federal income tax return, then the date by which the department must issue a proposed assessment under section 1 of this chapter for tax imposed under IC 6-3 is extended to six (6) months after the date on which the notice of modification is filed with the department by the taxpayer.

As added by Acts 1980, P.L.61, SEC.1. Amended by P.L.73-1983, SEC.16; P.L.82-1983, SEC.11; P.L.76-1985, SEC.6; P.L.335-1989(ss), SEC.19; P.L.347-1989(ss), SEC.18; P.L.2-1991, SEC.55; P.L.28-1997, SEC.26; P.L.181-1999, SEC.6; P.L.192-2002(ss), SEC.143.

IC 6-8.1-5-2.5

Correcting assessment notice; responsible party; exemption from time limitations

Sec. 2.5. (a) If the department determines that a proposed assessment notice includes an individual who is not responsible for the tax liability, a new assessment may be made naming only the taxpayer that is responsible for the tax liability.

(b) For assessments made under subsection (a), the time limitation for assessments in section 2 of this chapter does not apply.

As added by P.L.254-2003, SEC.10.

IC 6-8.1-5-3

Jeopardy assessment; jeopardy tax warrant; levy and sale; bond

Sec. 3. (a) If at any time the department finds that a person owing taxes intends to quickly leave the state, remove his property from the state, conceal his property in the state, or do any other act that would jeopardize the collection of those taxes, the department may declare

the person's tax period at an end, may immediately make an assessment for the taxes owing, and may demand immediate payment of the amount due, without providing the notice required in IC 6-8.1-8-2.

(b) If the department has sent a notice of proposed assessment under section 1 of this chapter to a taxpayer by United States mail and the notice is returned to the department because the taxpayer has moved and the department is unable to determine the taxpayer's new address, the department may:

- (1) declare the person's tax period at an end;
- (2) immediately make an assessment for the taxes owing; and
- (3) demand immediate payment of the amount due;

without providing the notice required in IC 6-8.1-8-2.

(c) If the payment is not made immediately, the department may issue or request the state police department to serve a jeopardy tax warrant against the person and, either without or with the assistance of the sheriffs of any counties in the state, may levy on and sell the person's property which is located in those counties. In place of the levy and sale procedure, the department may accept from the person a bond for the payment of the taxes, if the bond is in an amount at least equal to the amount of the total liability and if the bond is through a surety acceptable to the department.

As added by Acts 1980, P.L.61, SEC.1. Amended by P.L.26-1985, SEC.14; P.L.129-2001, SEC.21.

IC 6-8.1-5-4

Books and records; federal returns; inspection

Sec. 4. (a) Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

(b) A person must retain the books and records described in subsection (a), and any state or federal tax return that the person has filed:

- (1) for an unlimited period, if the person fails to file a return or receives notice from the department that the person has filed a suspected fraudulent return, or an unsigned or substantially blank return; or
- (2) in all other cases, for a period of at least three (3) years after the date the final payment of the particular tax liability was due, unless after an audit, the department consents to earlier destruction.

In addition, if the limitation on assessments provided in section 2 of this chapter is extended beyond three (3) years for a particular tax liability, the person must retain the books and records until the assessment period is over.

(c) A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable

times.

(d) A person must, on request by the department, furnish a copy of any federal returns that he has filed.

As added by Acts 1980, P.L.61, SEC.1. Amended by P.L.6-1987, SEC.11; P.L.71-1993, SEC.18.

IC 6-8.1-5-5

Reserved

Reserved

IC 6-8.1-5-6

Motor carrier fuel tax and surcharge tax; records or reports; audits or examinations; reimbursement

Sec. 6. (a) If a record or report maintained outside Indiana is required by the department with respect to the administration or collection of the motor carrier fuel tax and surcharge tax under IC 6-6-4.1, the department may require the taxpayer or carrier to make the record or report available at a location in Indiana.

(b) If a taxpayer or carrier fails to make a report or record available to the department at a location in Indiana, the department may require the taxpayer or carrier to reimburse the department in an amount equal to:

- (1) the per diem paid to state employees multiplied by the number of days attributable to the audit or examination, including travel days; plus
- (2) the lesser of:
 - (A) the expenses incurred by the department for lodging and travel; or
 - (B) four (4) times the amount determined under subdivision (1).

(c) A reimbursement received by the department under this section shall be used by the department to pay the expenses incurred in conducting out-of-state audits and examinations.

As added by P.L.8-1988, SEC.8.